POSSESSION—NOTICE—RECORD TITLE—DUTY OF PURCHASER.—Plaintiff and four brothers owned a tract of land as tenants in common under a deed of record. Plaintiff bought the interest of two of the co-owners, receiving warranty deeds but not recording them. Tenant lived on her three-fifths and cultivated the land. Defendant obtained judgment against one of plaintiff's grantors, levied execution on his one-fifth interest and purchased it at the sale. Plaintiff brings action to set the execution and sale aside. *Held*, she was entitled to the relief sought. *Collum* v. *Sanger Bros.* (1904), — Tex. —, 82 S. W. Rep. 459.

The court considered that the defendant was not relieved of the duty of inquiring of the person in possession notwithstanding that possession was consistent with the record title, thus reversing the decision of the civil court of appeals. *Sanger Bros.* v. *Collum,* 78 S. W. Rep. 401. The decision is contrary to the weight of authority though its doctrine is followed in *Nat. Bank* v. *Sperling,* 113 Ill. 273. It is well settled that a tenant in common has a right to occupy the whole or any part of the common property, the possession being presumed to be for the benefit of all. FREEMAN COTEN. §§ 166, 167. The doctrine is also generally accepted that the "actual, visible, notorious, continuous, and exclusive" possession of land by one rightfully there is constructive notice to subsequent purchasers or creditors of whatever estate or interest in the land is held by the occupant. JONES REAL PROP. § 1563; WADE, NOTICE, § 273; 48 Cent. Dig. 540. (Though a few states reject it. *Moore* v. *Jourdan,* 14 La. Ann. 414; *Farral* v. *Leverty,* 50 Conn. 46; *Lamb* v. *Pearce,* 113 Mass. 72.) This doctrine is qualified, however, by what Pomeroy says is a universal rule "that when a title under which the occupant holds has been put on record and his possession is consistent with that record, it shall not be constructive notice of any additional or different title or interest, to a purchaser or creditor who has relied on that record." 2 POM. EQ. § 616; *Schumacher* v. *Truman,* 134 Cal. 430; *Rogers* v. *Hussey,* 36 Ia. 664; *Wickes* v. *Lake,* 25 Wis. 71; *Mullins* v. *Hardware Co.,* 25 Mont. 525, 87 Am. St. Rep. 430, and cases cited.

PRINCIPAL AND SURETY—APPLICATION OF PAYMENTS.—A entered into a contract to install a heating plant in a school building. B became surety for payment of laborers and materialmen. C, the plaintiff, furnished a large amount of material. On two occasions A, having received installments of payment on the job, made remittances therefrom to C, with no particular directions as to application of such payments. C applied them on a former running account, and afterwards brought this action against A and B to recover for the material furnished for this contract. *Held,* that B was equitably entitled to have the payments made to C applied on the indebtedness for which he was surety. *Crane Co.* v. *Pac. Heat & Power Co. et al.* (1904), — Wash. —, 78 Pac. Rep. 460.

The holding in this case seems to be quite against the weight of authority. The rule is that where the debtor does not direct the application of a payment, the creditor may apply it as he sees fit. In the case of *Merchants Ins. Co.* v. *Herber,* 68 Minn. 420, cited by defendants as sustaining their conten-

tion, the payments, the application of which was in dispute, were of money belonging to the creditors, and in *Young* v. *Swan,* 100 Iowa, 323, the money belonged to the party against whom it was sought to enforce a lien. But in the present case it would seem that the money in question was the property of A, and that according to the rules generally followed C had a perfect right to apply it to the former account. See: 2 PARSONS, CONTRACTS, 634; *Pardee* v. *Markle,* 111 Pa. St. 548; *Stamford Bank* v. *Benedict,* 15 Conn. 437; *Hanson* v. *Rounsavell,* 74 Ill. 238; *Harding* v. *Tefft,* 75 N. Y. 461. See also, 12 L. R. A. 131, note.

PUBLIC OFFICERS—REWARDS—COUNTY BOARDS.—The plaintiff claims a reward offered by the county board for the arrest or conviction of felons by persons other than officers. *Held,* since the prisoner was convicted of larceny, the case clearly would not come under the provisions for the reward, and further that county boards have no power generally to offer such rewards. *Felker* v. *Board of Commissioners* (1904), — Kan. —, 78 Pac. Rep. 167.

It quite often happens that county boards or municipal corporations offer rewards for the arrest and conviction of criminals but the courts hold that such contracts can not be enforced as they are ultra vires. In *Gale* v. *Inhabitants of South Berwick,* 51 Me. 174, the court says that the authority given by legislation to a board or a corporation for the purpose of raising money does not extend to the raising of money for any purpose not incident to the discharge of corporate or board duties and that save where it is specifically imposed the apprehension of criminals is not included. In Kansas the legislature by specifically giving such power to the governor shows its intention not to give it to any one else. The rule applicable to the principal case is found in *Board of Commissioners* v. *Bradford,* 72 Ind. 455. Here the court states that a board of county commissioners has no power to aid in the arrest, prosecution or conviction of a person charged with the commission of a crime, either by offer of a reward or by employment of professional skill and a contract made by such board for such purpose, not entered of record, is ultra vires. This is supported by *Hawk* v. *Marion County,* 48 Ia. 472, and *County of Crawford* v. *Sperney,* 21 Ill. 288.

SALE OF STANDING TIMBER—TITLE TO TREES INCREASING IN SIZE AFTER MAKING OF CONTRACT.—Plaintiff, in consideration of a certain sum, sold to a lumber company "all the pine timber of and above the size of twelve inches on the stump when cut in and upon" a specified piece of land. The contract provided that the timber should be cut and removed within fifteen years. Under this contract, some timber, twelve inches in diameter and over, was cut and some of that size was left standing. Over ten years later, but within the prescribed period of fifteen years, the original purchaser sold its estate and interest in the timber to another company. Plaintiff forbade this last vendee's entering upon the land and cutting timber. This order was not obeyed, and the defendant entered upon the land and cut not only timber of the stipulated size, left by its vendor, but also such as had reached the diameter of twelve inches and over during the time that had intervened between the original sale of the trees and the second cutting. *Held,* that the last vendee had the right